

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DEVON A. BLANCHARD,)
)
Plaintiff,)
)
vs.) Case No. CIV-09-1229-M
)
JOHN WHISTLE, et al.,)
)
Defendants.)

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se* has filed this civil rights action pursuant to 42 U.S.C. §1983 alleging violations of his constitutional rights. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U. S. C. §636(b)(1)(B). By Order dated November 10, 2009, the undersigned noted that Plaintiff's Motion for Leave to Proceed In Forma Pauperis was deficient and advised Plaintiff that in order for his action to proceed, he must submit his institutional accounts statements for the six month period immediately preceding his filing. Plaintiff was ordered to cure the deficiency by the 30th day of November, 2009. Plaintiff was advised in the Order that failure to cure the deficiency timely could result in the dismissal of his action.

A review of the Court file reveals that as of this date Plaintiff has not responded to this Court's Order. He has not paid the filing fee, cured the deficiency designated above, shown good cause for his failure to do so, or requested an extension of time to comply with the Order. The undersigned finds that Plaintiff's failure to comply with this Court's Order

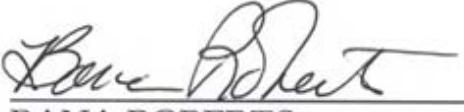
together with the Court's right and responsibility to manage and control its case load, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007) (sua sponte dismissal for failure to comply with Court's order permitted under federal rule, and court need not follow any particular procedures in dismissing action without prejudice for failure to comply).

RECOMMENDATION

Therefore, it is the recommendation of the undersigned that Plaintiff's action be dismissed without prejudice to refiling. Plaintiff is advised that he may file an objection to this Report and Recommendation with the Clerk of this Court on or before the 28th day of December, 2009, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Failure to make a timely objection to this Report and Recommendation waives the right to appellate review of both the factual findings and the legal issues decided herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the Magistrate Judge in the captioned matter.

ENTERED this 8th day December, 2009.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE